STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

SANTANNA NATURAL GAS CORPORATION d/b/a SANTANNA ENERGY SERVICES	)	
	)	Docket No. 02-0441
Application for Certificate of Service Authority Under ' 19-110.	)	

INITIAL BRIEF OF THE PEOPLE OF THE STATE OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS
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I. INTRODUCTION AND STATEMENT OF ATTORNEY GENERAL POSITION

Santanna Energy Services ("SES") seeks the Illinois Commerce Commission's affirmative endorsement of its qualifications to market natural gas to residential customers. The company's application asks that the Commission evaluate its resources and abilities to serve a market that it is, in fact, already serving and states Santanna's intention to fully comply with all applicable laws, rules and regulations pertaining to alternative gas suppliers ("AGS") while it competes for residential customers.

The People note that the Commission has available in this case evidence that is normally not available in utility applications for certificates of service authority. Since SES is already competing for residential customers and has done so for five months, it has established a track record. The Commission is obligated to consider this record. As an active marketer of alternative gas supply services, SES's past performance is relevant to the Commission's evaluation of its present capacity to perform to standard. This is not a matter of holding Santanna to a higher standard than other AGS applicants, but of considering relevant evidence.

The provisions of the Alternative Gas Supplier Act do not seek an applicant's promise to improve substandard performance, but rather require the Commission to find that compliance will be immediate and complete once certification is granted. In Santanna's case this appears to be an impossible goal. Santanna's past performance has proven so dismal that the company itself has ceased all residential marketing before the Commission has had a chance to rule on its application.

The Commission's view of competition should not countenance the type of marketing that has caused Santanna to question its own abilities. Moreover, granting an AGS certificate to Santanna could prove detrimental to the very competition the Commission is attempting to nurture. In some ways, the damage to the competitive natural gas market has already been done. Customers who have been misled or confused by Santanna's offer and who have thereafter elected to terminate their service with the company are now less likely to become active participants in any competitive utility market. They may view even legitimate offers by other marketers with suspicion, possibly causing them to make economically irrational decisions in the future. Potential customers may have already concluded that competition is too risky for "the little guy." Should the Commission choose to sanction Santanna's unreasonable management practices, it would compound this damage, by sending the wrong message to other potential applicants. Excusing applicants from reasonable management standards can only diminish the legitimacy of state law and regulations and ultimately degrade the Commission's authority on matters of utility deregulation.

The ICC's own Consumer Services Division was unable to endorse Santanna's application unequivocally. Instead, Staff's witness proposed that *if* the Commission chooses to grant the application, it be approved only on a conditional basis. Those conditions, as proposed by a Commission Staff witness, are so detailed and would require so much supervision on the part of Commission Staff that they would render Santanna a Commission experiment, not an independent provider. The People do not believe the Commission's discretion to attach conditions to its approval of an AGS should be used to

make an otherwise unqualified applicant qualified. Santanna is not an inexperienced entity that, with minimal guidance from the Commission, will meet statutory standards on the date of certification. Rather, Santanna's demonstrated inability to abide by long-established legal standards regarding marketing to retail customers, its chaotic and unmanageable marketing strategies and its indifference toward controlling its sales marketing agents – and most important, its inability to cure these problems over a protracted period of time -- demonstrates that Santanna is not qualified to market natural gas to Illinois residential customers.

The People urge the Commission to continue to exercise the same vigilance in protecting natural gas customers as it has in protecting utility customers in general and deny Santanna's application in this proceeding.

II. STATEMENT OF FACTS

Santanna has been operating as an Alternative Gas Supplier ("AGS") since March of 2002. In April and May of 2002, shortly after Santanna began marketing natural gas to residential customers, the Attorney General's Office, the Citizen's Utility Board ("CUB") and the Consumer Services Division of the Illinois Commerce Commission began receiving a steady stream of complaints regarding Santanna's marketing efforts and billing policies. *See generally* AG Ex. 1.0; CUB Ex. 1.0; Staff Ex. 1.00. The volume of complaints regarding Santanna increased significantly in June of 2002.

On June 17, 2002, CUB filed a verified complaint against Santanna with the Illinois Commerce Commission, citing several consumer complaints it had received regarding

Santanna.[1] CUB alleged that Santanna's marketing materials and contracts failed to adequately disclosure its prices terms and conditions of service to customers in violation of Section 19-115(f) of the Act, noting that Santanna did not adequately explain its practice of billing for stored gas prior to the use of that gas. *See Verified Complaint of the Citizens Utility Board*, June 17, 2002 (ICC Docket No. 02-0425); 220 ILCS 5/19-115(f). CUB's complaint is pending before this Commission.

On June 27, 2002, pursuant to Article XIX of the Act,[2] Santanna applied to the Commission for a certificate of service authority to serve residential gas supply customers in the service territories of Northern Illinois Gas ("Nicor"), People's Gas Company and North Shore Gas Company, initiating the instant docket. 220 ILCS 5/19-110. Both the People of the State of Illinois, through the Attorney General's Office, and CUB intervened in this docket.

On July 2, 2002, the Attorney General's Consumer Fraud Division filed a Complaint against Santanna in Circuit Court, requesting injunctive and other relief. The Attorney General alleged that Santanna had engaged in deceptive and misleading marketing practices, which prevented customers from being informed regarding all of the terms and conditions of Santanna's gas supply product, and denied customers the opportunity to affirmatively choose to subscribe to Santanna's services, in violation of Sections 2 and 2B of the Consumer Fraud and Deceptive Business Practices Act. 815

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[1] Since June 18, 2002, CUB has been forwarding the customer complaints it receives regarding Santanna to the Attorney General's Office.

[2] Article XIX of the Art has since been amended to require a certificate of service authority to serve both residential and small commercial gas supply customers.

ILCS 505/2 & 2B. This complaint is pending in Cook County Circuit Court. Case Number 02-CH 12208, filed July 2, 2002.

On July 3, 2002, , in ICC Docket No. 02-0425, CUB filed a Motion for an Order to Cease and Desist, attached to which were over 300 customer complaints regarding Santanna received by CUB as of the date of filing. The number of complaints regarding slamming customers and improper billing based on Santanna's bill for storage policy has continued to increase.

Santanna continued to market gas supply service to residential gas customers in Illinois through July 31, 2002, at which time the company terminated all marketing activities for residential customers in Illinois. Santanna Ex. 1.0 at 7 (146-148); Tr. 223. Since March, Santanna enrolled over 52,000 residential customers. Santanna Ex. 1.0 at 20(456). As of August 22, 2002, Santanna had 38,027 residential customers, which means at least 13,974 residential customers had been terminated during the company's five month marketing effort. Santanna Ex. 1.0 at 4(90). Santanna also recorded 5,562 "customer inquiries" into its customer service log. During that same time, the Illinois Attorney General's Office directly received 38 complaints regarding Santanna. The Attorney General continued to receive complaints through the evidentiary hearing. Tr. 482(21)-483(9). CUB received over 600 customer complaints, and since July 31, 2002, has continued to receive complaints. CUB Ex. 1.0 at 11. On, June 18, 2002, CUB began forwarding the complaints that it received from customers to the Attorney General's Office. The AG has only noted a handful of duplicative complaints among those received from CUB. Tr. 488(5-18). In addition, the Illinois Commerce Commission's Consumer

Services Division received 359 complaints from March 1, 2002 through July 26, 2002. ICC Staff Ex. 1.00 at 6(135)

III. STATUTORY BACKGROUND

On June 27, 2002, Santanna Energy Services ("Santanna") filed an Application for Certificate of Service Authority under Section 19-110 of the Public Utilities Act ("the Act"). Santanna has been marketing to Illinois residential customer as an AGS since March of 2002. Santanna Ex. 1.0 at 3(56-57). Santanna's application specifically requests authority to serve residential gas customers within the "…area that falls in the territory served by Nicor Gas utility company, Peoples Gas utility company and North Shore Gas utility company." Application at 3. In order for Santanna to serve residential gas customers in Illinois, Santanna must meet the requirements of Sections 19-110 and 19-115 of the Act.

Under Section 19-110 of the Act, Santanna must provide sufficient information for the Commission to make the following findings:

> (1) That the applicant possess sufficient technical, financial, and managerial resources and abilities to provide the service for which it seeks a certificate of service authority. In determining the level of technical, financial, and managerial resources and abilities which the applicant must demonstrate, the Commission shall consider the characteristics, including the size and financial sophistication of the customers that the applicant seeks to serve, and shall consider whether the applicant seeks to provide gas using property, plant, and equipment that it owns, controls, or operates.
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> (2) That the applicant will comply with all applicable federal, State, regional, and industry rules, policies, practices, and procedures for the use, operation, and maintenance of the safety, integrity, and reliability of the gas transmission system.

(3) That the applicant will comply with such informational or reporting requirements as the Commission may by rule establish.

(4) That the area to be served by the applicant and any limitations it proposes on the number of customers or maximum amount of load to be served meet the provisions of Section 19-115, provided, that if the applicant seeks to serve an area smaller than the service area of a gas utility or proposes other limitations on the number of customers or maximum amount of load to be served, the Commission can extend the time for considering such a certificate request by up to 90 days, and can schedule hearings on such a request.

(5) That the applicant will comply with all other applicable laws and rules.

220 ILCS 5/19-110(e).

Section 19-115 sets out the obligations of an AGS:

(a) The provisions of this Section shall apply only to alternative gas suppliers serving or seeking to serve residential customers and only to the extent such alternative gas suppliers provide services to residential customers.

(b) An alternative gas supplier shall:

(1) comply with the requirements imposed on public utilities by Sections 8-201 through 8-207, 8-301, 8-505 and 8-507 of this Act, to the extent that these Sections have application to the services being offered by the alternative gas supplier; and

(2) continue to comply with the requirements for certification stated in Section 19-110.

(c) An alternative gas supplier shall obtain verifiable authorization from a customer, in a form or manner approved by the Commission, before the customer is switched from another supplier.

. . . . .

(f) An alternative gas supplier shall comply with the following requirements with respect to the marketing, offering, and provision of products or services:

(1) Any marketing materials which make statements concerning prices, terms, and conditions of service shall contain information that

> adequately discloses the prices, terms and conditions of the products or services.
>
> (2) Before any customer is switched from another supplier, the alternative gas supplier shall give the customer written information that adequately discloses, in plain language, the prices, terms, and conditions of the products and services being offered and sold to the customer.
>
> (3) The alternative gas supplier shall provide to the customer:
>
> itemized billing statements that describe the products and services provided to the customer and their prices; and an additional statement, at least annually, that adequately discloses the average monthly prices, and the terms and conditions, of the products and services sold to the customer.

220 ILCS 5/19-115. The Commission shall only grant an application for a certificate of service if it makes a finding that the applicant meets the requirements set out in Section 19-110(e)(1-5). 220 ILCS 5/19-110(e)(1-5). Article XIX of the Act provides no other avenue for the Commission to grant an application for a certificate of service, absent a finding that the applicant has fully met the requirements set out in Section 19-110(E)(1-5). *Id*.

While the General Assembly has elected not to regulate natural gas suppliers serving large commercial and industrial customers, the legislature has concluded that residential customers deserve to have the protection of some basic consumer safeguards in place to ease their transition into a competitive market. Although the gas supply market has been open to competition for large commercial and industrial customers for several years with virtually no regulation governing that market, providers serving residential customers are required to meet certain regulatory standards with respect to the financial, technical and managerial aspects of their business.

This distinction is no accident. It reflects the legislature's recognition that residential customers are not merely smaller versions of industrial consumers, but are a unique customer class with special marketing and educational needs. As set out above, an AGS wishing to serve residential gas customers must demonstrate that it meets all five requirements set out in Section 19-110(e). 220 ILCS 5/19-110(e). Required findings (1) and (5) are particularly relevant to the instant docket.

Required Finding (1)

Under required finding (1), an applicant must demonstrate that it possesses "sufficient technical, financial, and managerial resources and abilities to provide the service for which it seeks a certificate of service authority." 220 ILCS 5/19-110(e)(1). In determining the level of resources and abilities that the applicant must demonstrate, "the Commission shall consider the characteristics, including the size and financial sophistication of the customers that the applicant seeks to serve." Id.

Applied to the instant docket, the residential customer targeted by Santanna's marketing agents require the highest level of managerial resources and expertise. Residential customers, accustomed to purchasing utility service from regulated monopoly providers, do not exhibit much financial sophistication with respect to the pricing, acquisition or storage of natural gas. These consumers are used to being billed for utilities service on a usage basis. Where an applicant seeks to offer a paradigm-shifting billing practice to these customers, its management must be prepared to fully educate such customers about all aspects of a product that may greatly increase the customer's monthly gas charges.

Required Finding (5)

Under required finding (5), an applicant must demonstrate that it will comply with "all other applicable laws and rules." Specifically, the applicant must comply with: the door-to-door sales rules set out in the Illinois Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/2B (West 2000)), which requires a marketer to inform a customer that they have 3 days to cancel their purchase without penalty; the Illinois Telephone Solicitation Act (815 ILCS 413/15), which sets out certain information that must be provided by a telemarketer; the federal Telemarketing Sales Rule (16 CFR Part 310), which requires a telemarketer to state all terms and conditions prior to closing a sale; and the other sections of the Act, specifically Section 19-115, which sets out the rules AGS must follow. Where an applicant has not complied with these or other applicable laws in other states or in Illinois, the Commission may not find that the applicant meets 19-110(e)(5), and the Commission cannot grant it a certificate of service authority.

IV. ARGUMENT

Santanna's Application to be certified as an AGS should be denied. Santanna's brief foray into the residential gas supply market has resulted in over 2,000 complaints, over 5,500 "customer inquiries" and over 13,000 terminated customers. For much of that time, Santanna failed to provide the legally minimum amount of information to its prospective residential customers, and unlawfully delayed informing prospective customers of material terms and conditions of its natural gas offer until after the company had claimed them as a customer, in violation of Section 19-115(f) of the Act. Through these and other

acts, Santanna has clearly demonstrated that it does not possess the necessary managerial expertise to market natural gas to residential customers. Therefore, the People request that the Commission deny Santanna's application to be certified as an AGS, either on an "as is" or on a conditional basis. Since Santanna has already effectively admitted that it does not possess the expertise needed to lawfully market natural gas to residential customers by discontinuing all marketing to those customers, Santanna Ex. 1.0 at 7 (146-48), the Commission should not allow Santanna to continue using Illinois' residential gas consumers as "guinea pigs" to test a marketing strategy which Santanna generously describes as "evolutionary."

A. Santanna's experience in marketing gas supply products to residential customers demonstrates that the company does not possess sufficient managerial resources and abilities to serve residential customers.

In order to grant Santanna's application, the Commission must find that Santanna possesses sufficient managerial resources and abilities to provide retail gas to residential customers within the service areas of Nicor Gas, People's Gas and North Shore Gas, considering "...the characteristics, including the size and financial sophistication of the customers that the application seeks to serve." 220 ILCS 19-110(e)(1). Santanna's application fails to demonstrate that the company possesses sufficient managerial resources and abilities to serve its intended customer base, in view of the particular characteristics of residential customers. The company therefore falls short of satisfying the requirements of 19-110(e)(1). Furthermore, the testimony of its sole witness confirms that the company does not have, and had demonstrated no intention of acquiring, the managerial resources and abilities needed to qualify as an alternative gas supplier to retail customers.

Santanna's President and only witness, T. Wayne Gatlin, related in his pre-filed testimony that Santanna has a "15-year-old commercial and industrial natural gas business." Santanna Ex. 1.0 at 29,(663-64). But outside of the Nicor "Customer Select" and People's "Choices For You" programs, Gatlin admitted that Santanna has had no experience serving or marketing to residential gas supply customers. Santanna Ex. 1.0 at 20(454-55). Indeed, Santanna witness Gatlin testifies that Santanna has "…no prior experience with residential customer programs…" *Id*. Nor, as Gatlin conceded, do any of the other executives described in Santanna's application possess such experience. Application, Attachments F, G.

This lack of experience in retail marketing might not be so critical in another applicant. But for Santanna, it has proven to be a serious detriment to its attempts to become a successful competitor in the retail gas market. Gatlin acknowledged in his rebuttal testimony that …perhaps due to Santanna's lack of prior experience in the residential market place, we failed to understand fully the detail necessary to help prospective customers understand how the program works." Santanna Ex. 1.0 at 6(136-38) This inability to identify and communicate the information necessary to enable residential customers to feel comfortable about participating in Santanna's program is evident in the number of complaints that the ICC, CUB, the People and Santanna itself received. Indeed, Gatlin identified confusion regarding the billing-for-storage aspect of the Santanna project as the most prevalent problem expressed in customer complaints. Tr. 124(19)-125(6). When asked why customers so frequently misunderstood the storage aspect of Santanna's program, Gatlin stated "I don't actually know. I think Santanna's marketing materials and

welcome letter explained the storage component of the program." Santanna Ex. 1.0 at 10, (210-11).

The inability to grasp "the detail necessary to help prospective customers understand how the program works" is not surprising, given how little preparation Santanna did prior to entering the residential market. In fact, Gatlin stated he was unfamiliar with the laws relevant to retail marketing, specifically, the federal Telemarketing Sales Rule 16 CFR Part 310 and the Illinois Consumer Fraud Act and Deceptive Business Practices Act, 815 ILCS 505/1,*et seq.*; Tr. 65(17)–66(2). The record indicates that prior to March of 2002, Santanna did not even bother to apprise itself of the legal duties it would assume upon initiating the marketing of its services to retail customers, and in fact had done nothing to prepare for the shift in its marketing focus. Tr. 69. Nor had the president of the company acquired any familiarity with these laws in the ensuing months, in spite of the overwhelmingly negative reaction of so many customers to his company's marketing efforts. Indeed, as of the end of August, Mr. Gatlin remained so unaware of issues relevant to retail marketing that he testified on the witness stand that he believed there was no difference between marketing to commercial customers and marketing to residential customers. Tr. 69.

The confusion regarding Santanna's billing practices, related to all parties in this docket by customers, demonstrates that despite the experience the company acquired with retail marketing between March and July of this year, Santanna still does not possess the necessary expertise to properly market to residential gas customers. Nor does Mr. Gatlin, Santanna's sole witness, appear to understand or appreciate the customer education

necessary to market his company's services to residential customers. Santanna's efforts to address these issues by modifying its marketing materials prior to this hearing neither remedy these problems nor address the apparent difficulty Santanna has had ensuring that its marketing materials are actually used without alteration or modification.

B. Santanna does not use consistent contracting materials.

Santanna provided numerous documents in response to requests for its marketing materials, contracts and termination policies. Throughout Santanna's "evolutionary" marketing efforts from March 1, 2002 through July 31, 2002, Santanna used and provided customers with an ever-changing array of informational materials and service provisions. *See* Santanna Ex. 1.0 at 11(252). Further, evidence was provided at hearing that Santanna allows its door-to-door marketers to modify its materials with only cursory oversight by the company. Tr. 162(7)-164(10).

CUB's cross-examination of Gatlin revealed that Santanna used five (5) different contract forms to acquire customers via door-to-door marketing from March 1, 2002 through July 31, 2002. CUB Cross Ex. 15, SES ICC 001-005. These different contract forms employed a wide variety of cancellation periods, cancellation fees, administrative fees, "cash out" formulas and arbitration clauses. Some contract forms contained no such provisions at all. Therefore, depending on which contract form the customer signed, different customers would be subject to different contractual obligations under their service agreements with Santanna.

In addition, Santanna was unable to keep track of which forms were in use at any given time. For example, during discovery, Santanna produced a contract allegedly signed

by a prospective customer in late June. CUB Cross Ex. 16. Yet, that contract was not executed on the contract form Santanna presented as the only contract form in use between May 17, 2002 and July 8, 2002 to enroll retail customers. See CUB Cross Ex. 15 at SES ICC 003; Tr. 234(21)-235(11). Indeed, Santanna witness Gatlin could not identify the contract form in CUB Cross Ex. 16 as one of the five used between March 1st and July 31st. Tr. 302(10)-303(4). Nor could Mr. Gatlin identify during which period this "orphan" contract form was used. Tr. 235(14-19). Santanna produced several other contracts, signed between May and June. CUB Cross Ex. 15 at SES ICC 227, 236, 237, 250; *see also generally* CUB Cross Ex. 15. None of these contracts were executed on the contract forms that Santanna claimed were in use on the dates shown on the contracts. CUB Cross Ex. 16 & 17.

Given this hodge-podge of contract forms, all containing different provisions and many used regardless of whether the company had designated them as containing the company's official terms and conditions on any given date, it is difficult to assume that the company understood exactly which provisions applied to which customers, or even what specific terms and conditions the company was offering to its retail customers on any given date. Santanna's inability to manage its contracting procedures and the very provisions under which it contracts with customers demonstrates its lack of managerial resources and abilities sufficient to provide residential gas supply service.

C. Santanna has not demonstrated the ability or willingness to exercise sufficient oversight of its marketers to meet the managerial requirements of Section 19-110.

The numerous complaints cited in this docket point to a critical problem that lies at the root of Santanna's marketing efforts: Santanna insistence that it delegate nearly all of its responsibility for sales training and oversight to its marketing agents. Yet it is Santanna, not its agents, that is requesting certification as an alternative gas supplier. Indeed, Santanna's decision to delegate so much responsibility to its agents, and the ultimate result of that inappropriate delegation of Santanna's responsibility -- the substantial number of complaints and customer terminations -- is direct evidence that Santanna does not possess sufficient managerial resources and abilities to be issued a certificate of service authority.

1. Santanna improperly allowed its door-to-door marketers to modify their marketing scripts and the company's gas supply contracts.

Santanna has not provided any direct training of the actual sales force that is soliciting customers on Santanna's behalf. In answer to the question "[d]o you know if anyone from Santanna participated in the training," Mr. Gatlin stated "[t]hat's not my knowledge that anyone with Santanna did participate in the training, other than the preparation of the scripts to be used by the telemarketers." Tr. 151(22)-152(5). In fact, Mr. Gatlin, Santanna's sole witness in this docket, admitted he did not know exactly what training the sales force members had received. Tr. 151(18-21). In reply to the inquiry "[w]ho had oversight for the training program?" Mr. Gatlin's only answer was "[t]he telemarketing company has oversight responsibilities for the training of its employees." Tr. 152(6-10).

The mere provision of scripts and marketing materials is insufficient to train a telemarketing sales force. If that fact was not readily apparent from the beginning of Santanna's foray into residential gas supply service, the substantial volume of complaints, occurring within a few months of engaging the telemarketing sales force, should have made it abundantly clear that Santanna had to take a more direct role in training its telemarketing sales force. However, as was revealed during the hearings in this case, Santanna decided that it would leave the training in the control of the individual telemarketing companies, Tr. 152(6-10). This delegation of responsibility for training remained in effect even when the number and nature of the complaints made it clear that there must be something seriously wrong with either the company's marketing strategy or the marketing agents' execution of that strategy. This type of "hands-off" delegation should not be condoned by the Commission as reasonable behavior for an AGS. Indeed, it provides more direct evidence that Santanna does not possess sufficient managerial resources and abilities to be issued a certificate of service authority.

Santanna's oversight of its door-to-door marketers was particularly lax. Various documents show that Santanna's Vice President of Midwest Operations, Doug Cueller, was informed of and apparently authorized agents to make their own modifications to Santanna's marketing scripts and even to the company's gas supply contracts. First, in an e-mail message from Santanna Vice-President Doug Cueller to Erik Hudson of Consumer Choice, Inc., one of the company's marketing agents, Mr. Cueller offers a marketing script stating that "if you need to modify the script suggestions, we would like to see the condensed version." Tr. 163(3-6). Regardless of Mr. Gatlin's claim that Mr. Cueller was

referring only to the marketing script contained in the e-mail, and not to any other scripts, this is an impermissible delegation of authority to a mere sales agent. Tr. 163(7)-164(10). Why would Santanna take the chance to review only a "condensed version" of the script, given the always real possibility that an agent might choose to prepare a script that might be deceptive or misleading? Santanna should, at the very least, be fully informed of changes to its marketer's sales program. Viewing a "condensed version" of the modified script is unacceptable and in fact is an explicit invitation to rogue agents to cross the line between "puffery" and outright deception or misrepresentation.

Second, Santanna apparently allowed CCI to modify and employ a contract form without obtaining Santanna's authority to do so. Not only is this type of delegation irresponsible, such activities were not even part of CCI's contract with Santanna. While Mr. Gatlin stated that he asked Santanna employees to produce all contract forms that were used in the residential program in response to discovery filed in this case, Tr. 302(17-20), the contract form used in CUB Cross Ex. 16 was not produced in answer to that specific request. Tr. 302(10-16). The source of the "orphan" contract form becomes clear in an e-mail sent from CCI representative Erik Hudson to Santanna representative Doug Cueller, wherein CCI advises Santanna that "[w]e are probably going to modify the customer awareness form on the order form one more time…" CUB Cross Ex. 14. The contract form provided on SES ICC 237 contains this "customer awareness" section, which was modified by CCI and apparently was not even available to Santanna when the parties specifically requested, during the course of discovery, copies of all company contract forms. Tr. 244(7)-245(12); *see also* CUB Cross Ex. 15 at SES ICC 002; CUB Cross Ex. 16

at SES ICC 237. It is this contract, modified by CCI, with which Santanna claims to be unfamiliar, that was the contract form used in CUB Cross Ex. 16 (as discussed in Section 4(b) above) to sign customers up to Santanna's retail gas supply service, the form that Mr. Gatlin was unable to identify as one of Santanna's own forms. CUB Cross Ex. 16 at SES ICC 222-26, 228, 231-35, 237-44, 246, 248-49; Tr. 302(10)-303(4); *see also* CUB Cross Ex. 16 at SES ICC 237. For a principal to allow a sales agent to modify a contract form, without strict oversight, is an improper delegation of authority and demonstrates that Santanna does not possess sufficient managerial resources and abilities to be issued a certificate of service authority.

2. Santanna performs almost no monitoring of its marketing agents.

Santanna, to a large degree, allows its marketing agents to monitor themselves. Santanna witness Galtin states "…Santanna contracted with several marketing companies to market its residential gas program and we expected that each would abide by its respective contracts and oversee its own operations relating to Santanna." Santanna Ex. 1.0 at 14(314-316) (emphasis added). "I will say further that Santanna contracted with what it believed were reputable companies, addressed problems as soon as they arose and continuously followed up with those marketers on any issues that arose in relation to Santanna's residential natural gas business…" Santanna Ex. 1.0 at 19(431-434). Yet, Santanna's efforts to monitor its marketing agents left much to be desired. Indeed, Staff witness Joan Howard stated on cross-examination "Santanna is going to have to somehow step up quality assurance with regard to the people who are marketing for them because I think that that's been a large problem." Tr. 510(13)-512(12).

Mr. Gatlin states that "Santanna also randomly listens in to telemarketing sales and verification calls." Santanna Ex. 1.0 at 14(316-317); *see also* Santanna Ex. 1.17 at 14. Yet when asked on cross examination, Mr. Gatlin could not say with what frequency Santanna listened to telemarketing sales and verification calls. Tr. 158. Nor could Mr. Gatlin state that any record was kept of these allegedly randomly monitored calls. Tr. 158(14)-159(7).

Similarly, in the context of Santanna's door-to-door marketing, Mr. Gatlin stated that "We had no structured monitoring process in place, other than dealing with the management of the [marketing] company on a routine basis, addressing complaints, with the ultimate repercussion obviously being that the relationship between Santanna and the marketing company, if we couldn't identify the problem and correct the problem, would not prevail." Tr. 198(10-21); *see also* Santanna Ex. 1.0 at 14 (317-19). However, as will be addressed below, evidence brought out in the cross examination of Mr. Gatlin shows that Santanna did not act on these threats until it generally abandoned all active marketing to Illinois residential gas customers on July 31, 2002. Unwilling or unable to control its agents, Santanna simply ceased its marketing efforts, rather than employ those measures necessary to cure the problems it claims many of those agents created. Santanna now awaits the end of the various lawsuits and administrative proceedings filed against it, which it apparently believes will mark the end of its regulatory problems. Tr. 199(19)-200(10); 200(3)-201(8). Santanna Ex. 1.0 at 7.

a. The record indicates that Santanna marketers misrepresented themselves as Nicor agents.

Several complaints in this docket allege that Santanna door-to-door sales people posed as Nicor representatives, and thereby acquired customer signatures or customer bills.

In his rebuttal testimony, Santanna witness Mr. Gatlin claims "[n]o, I can say that the alleged instances of a sales representative posing as a NICOR employee to my knowledge was limited to a single person." On cross examination, Mr. Gatlin reaffirmed the above statement as true "to the best of my knowledge." Tr. 166(4-11). However, shortly thereafter, Mr. Gatlin admitted that more than one sales representative was using this tactic. In fact, the record refers to at least six different door-to-door sales representatives from both of the door-to-door marketing companies utilized by Santanna that were misrepresenting themselves as Nicor personnel. Tr. 166(15)-173(12). Indeed, one of Santanna's marketing agents refer to the practice of door-to-door salespeople misrepresenting themselves as Nicor personnel as a "sales trick." CUB Cross Ex. 9.

b. The record indicates that marketers used various surveys and price quote requests to unlawfully obtain the signature necessary to switch residential customers.

There were numerous complaints that gas consumers were asked to sign a survey or provide information or a bill for a price quote from Santanna, only to find in their next bill that Santanna was now their gas supplier. AG Ex. 1.01 at AG 130-31; AG Stipulated Ex. 1 at Nicor 1067, 1195, 1286. In fact, Santanna was asked about a chart containing information regarding customer complaints and subsequent investigations and conclusions, if any. CUB Cross Ex. 3. This chart referred to several customer complaints stating: "Signed survey to make sure that NG is servicing his account correctly and at current rate"; "Customer called and said that her and her son were tricked to sign up with SES. They went down the block telling them to sign a survey to save on gas prices"; "survey form, again"; "Rep said signing survey"; "Sales rep told customer and neighbors if they wanted

to get a quote on SES price for the house, they would need to sign paper"; "sign survey and receive a 13 percent savings, guaranteed"; "Sign paper"; Sign survey." *Id*; Tr. 187(9)-189(1). These types of sales tactics violate Section 19-115(c)'s requirement that an AGS obtain verifiable authorization from a customer before the customer is switched from another supplier.

Mr. Gatlin originally stated in his rebuttal testimony that: "I am not sure if the customers just forgot that they had chosen Santanna or just wanted to find a way out of their agreement by fabricating slamming complaints." Santanna Ex. 1.0 at 13(291-93). However, Mr. Gatlin stated later under cross-examination that "Santanna is not going forward operating under the belief that the complaints that we received are based on fabrication." Given this contradictory response, it is uncertain what Mr. Gatlin's position is regarding the above survey and price quote complaints. What is more important, however, is that the company possesses so little expertise in retail marketing that it was unable to address these problems, short of suspending all marketing efforts.

3. Santanna has not disciplined individuals or individual marketing companies, despite evidence of significant misrepresentation of Santanna's program to residential customers.

On more than one occasion, Santanna witness Gatlin stated that once Santanna became aware of a marketer's improper marketing practice, it acted to resolve the issues and discipline the offenders. However, Santanna only offered

one instance in which it claims that the offending marketing agents were disciplined.[3]

The record in this docket is full of instances in which Santanna personnel have threatened, but failed to exercise, discipline over the company's marketing agents. As cited above, Mr. Gatlin states that Santanna "...addressed problems as soon as they arose and continuously followed up with those marketers on any issues that arose in relation to Santanna's residential natural gas business..." Santanna Ex. 1.0 at 19(431-434). Further, Mr. Gatlin stated in reply to questions regarding door-to-door sales people misrepresenting themselves as Nicor agents, "...I think we demonstrated in several different places that we didn't have any tolerance or people staying in the [sales/marketing] program if they were operating outside the guidelines of the program." Tr. 180(16)-181(11). However, the record does not support his claims. There is a dearth of companion evidence that, in the face of continued problems, any discipline was carried out.

Santanna threatened to terminate its business relationship with CCI, one of two door-to-door marketers representing Santanna, because it believed CCI's employees may have been misrepresenting themselves to gas consumers as Nicor personnel. Referencing CUB Cross Ex. 10, CUB counsel cross-examined Mr. Gatlin as follows:

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[3] Regarding a particular incident, wherein two marketing representatives were intoxicated when marketing to gas consumers, Mr. Gatlin stated, "I think I know for a fact that the two people that were involved in the intoxication issue were terminated." Tr. 199(19)-200(10); *see also* CUB Cross Ex. 14.

Q: It says, "This is the second complaint, both in CCI exclusive towns. Please make sure that this is the last or we will have to consider terminating our business relationship." Can you tell me what the date is on this document?

A: May 23.

Q: In fact, Santanna maintained a business relationship with CCI until approximately July 31, isn't that correct?

A: That's correct.

Tr. 182. As addressed above, this was not the only time that consumers had complained about CCI's "sales trick" of misrepresenting themselves as Nicor agents. CUB Ex. 2.0 at 6; CUB Cross Ex. 9. Indeed, CUB Cross Ex. 3 provides a list of complaints, including allegations of CCI sales people claiming to be Nicor representatives and obtaining bills and signatures by using surveys or offering price quotes.

It is not clear from the record whether Santanna obtained the CCI list before this docket was initiated or only pursuant to discovery requests. Whatever the case, Santanna's handling of these misrepresentation issues was inexcusable. If Santanna possessed this list it should have terminated its marketing contract with CCI based on its behavior. If Santanna did not possess this chart, it is evidence of Santanna's almost non-existent supervision of its marketing agents. Either of these scenarios demonstrate that Santanna has insufficient managerial resources and abilities to provide residential gas supply service.

D. Santanna has not shown that it has adjusted its call center policy sufficiently to address the significant problems that its customers have had contacting Santanna.

Despite receiving numerous complaints that customers could not get through by phone to a Santanna representative in order to terminate their gas supply service with Santanna, the company has continued to maintain that its customer call center is adequately staffed to receive all customer inquiries, complaints and requests to terminate service.

In a letter to a gas consumer dated July 24, 2002, an attorney for Santanna stated by way of explanation for the customer's inability to reach Santanna personnel that Santanna's call center allocated seven people to answer phones. AG Cross Ex. 3. The customer had tried to call Santanna in order to cancel her gas supply service with Santanna on and around June 12, 2002. *Id*. The letter also stated, referring to those seven people allocated to the call center, that seven is an adequate number of customer service representatives for customer complaints given the size of Santanna's customer base. *Id*. But obviously, this response provides no satisfaction to the aggrieved customer: an "adequate" number of customer service representatives would have been a number that succeeded in answering the customer's call.

In response to Miss Howard's concerns regarding the call center (ICC Staff Ex. 1.00 at 10(217-34), Mr. Gatlin states that Santanna has hired 17 additional employees. Tr. 90(21)-91(4). However, Santanna's current system has a continuous limitation of ten people that can take inbound calls. Tr. 92. Mr. Gatlin's rebuttal testimony states that over 52,000 customers have been enrolled by Santanna, and that Santanna currently has 38,027 customers. Santanna Ex. 1.0 at 4(90), 20(456). In order for a customer enrolled by

Santanna to terminate their service with Santanna, the customer must contact Santanna. Tr. 91(21)-92(9). Mr. Gatlin testified that "termination creates an additional burden for Santanna to address customer inquiries and process cancellations which have required the use of extraordinary resources by Santanna." Santanna Ex. 1.0 at 19(268-68); Tr. 93(12)-94(6) Indeed, Staff witness Howard states that Santanna's call center policy is insufficient to meet the requirements set out in her direct testimony. Tr. 525(20)-526(10). The People maintain that Santanna has not done enough to redress customer contact problems.

E. Santanna's verification procedures are inconsistent with the Commission's established verification policies and provide marketers with a perverse financial incentive to verify their own sales.

While the Commission currently has no explicit policy regarding switching or slamming rules for natural gas service providers, Section 19-115 provides that:

> An alternative gas provider shall obtain verifiable authorization from a customer, in a manner approved by the Commission, before the customer is switched from another supplier.

220 ILCS 5/19-115(c).

To the extent that the Illinois General Assembly has adopted the Federal Communications Commission's slamming safeguards and incorporated them into the Public Utilities Act to protect telecommunications customers from unauthorized switching of their service provider, those provisions of the Act set forth appropriate verification procedures for alternative gas suppliers. *See* 220 ILCS 5/13-902.

Although Santanna maintains that it performs verifications of all its telemarketing sales, Santanna's verification policy ignores the very purpose behind the Act's third party verification requirement. Specifically, Santanna's verification procedures do not provide

an unbiased, independent method to ensure that customers know that they are switching to a new gas supply service. Few, if any, of the safeguards that the PUA requires in order to switch service for long distance customers are part of Santanna's verification policy.

A customer's natural gas service is at least as vital a basic utility as telephone service, and as the source of life-sustaining heat and cooking fuel, to many customers it is arguably more vital. Because the General Assembly largely adopted the FCC's rules as the basis of the Act's anti-slamming provisions, the principles underlying the FCC's rules represent a valid means of evaluating the sufficiency of Santanna's verification policies. At the very least, the rules' purpose of ensuring competition through vigorous protection of consumer choice is a goal that the Commission should most certainly endorse.

The FCC's policy concerning the appropriate manner in which to implement changes to consumers' long distance carriers was promulgated pursuant to Section 258(a) of the Telecommunications Act of 1996, which makes it unlawful for a carrier to "submit or execute a change in a subscriber's selection of a provider…except in accordance with such verification procedures as the [Federal Communications] Commission shall prescribe." 47 USC § 258(a). Further, the FCC stated that "…for healthy competition to flourish, consumer choice must be protected vigorously." *In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996: Policies and Rules Concerning Unauthorized Changes of Consumer Long Distance Carriers*, Second Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 94-129 (December 17, 1998), ¶ 16 ("Second Report and Order").

These rules were incorporated through the 2001 amendment to the Act so that when a customer does not initiate a service provider solicitation, the Act requires that:

> An appropriately qualified independent third party has obtained the subscriber's oral authorization to submit the preferred carrier change order that confirms and includes appropriate verification data (e.g. the subscriber's date of birth or social security number).

220 ILCS 5/13-902(c)(6)(c).

An "independent third party" is defined in the same section:

> The independent third party must not be owned, managed, controlled, or directed by the carrier or the carrier's marketing agent; must not have any financial incentive to confirm preferred carrier change orders for the carrier or the carrier's marketing agent, and must operate in a location physically separate from the carrier or the carrier's marketing agent.

Id. These restrictions on how an "independent third party" verifier may operate and be compensated were enacted to ensure that a disinterested party confirm a customer's choice to switch suppliers. Indeed, the FCC explained the reasons for enacting its rules, stating in its *Second Report and Order* that:

> We have seen many instances in which carriers use third party verification in a manner that is calculated to confuse and mislead consumers. These carriers slam consumers by first using misleading telemarketing to induce consumers to change carriers, for example, by telling them that their local and long distance bills will be consolidated. Then third party verifiers close the deal for these slamming carriers by assuring the consumers that they have merely authorized billing consolidation, not any carrier changes. <u>We emphasize that our existing rules mandate that a third party verification must be truly independent of both the carriers and the telemarketer in order to constitute a valid verification. In particular, a third party verifier that has any incentive, financial or otherwise, to approve a carrier switch would violate our rules and such verification would not serve as evidence to rebut a subscriber's allegation of an unauthorized switch.</u>
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> ***

> …we reiterate that the third party verifier must operate in a location physically separate from the carrier. We note our rules already require this, but we highlight this requirement because we find it to be an important one. Requiring third party verifiers to be in different physical locations from carriers reinforces the arms-length nature of their relationship.
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> …we conclude that scripts used by the independent third party verifier should clearly and conspicuously confirm that the subscriber has previously authorized a carrier change. The script should not mirror any carrier's particular marketing pitch, nor should it market the carrier's services. Instead, it should clearly verify the subscriber's decision to change carriers.

Second Report and Order at ¶ 70-72 (emphasis added). As the order makes clear, it is the unbiased nature of the third party verifier that protects consumers.

Santanna's verification policy does not come remotely close to meeting the requirements set out in Section 13-902 of the Act and explained in the FCC's *Second Report and Order.* The majority of Santanna's verifiers cannot be considered third parties, and the remainder cannot be considered independent. Santanna's contracts with all of its telemarketers require a verification be produced, along with the customer's vital information, in order for the marketer to be paid for that customer switch. AG Cross Ex. 4 at SES ICC 365, 369, 377, 381, 385, 389, 393, 401, 405, 409, 413, 417, 421. To meet this verification requirement, many of Santanna's telemarketers perform their own verifications of customer switches. AG Cross Ex. 1. While Commission rules require that a third party verifier not have a financial inventive in the sale being verified, Santanna witness Gatlin confirmed that the company does not enter into independent contracts for verification

services. Tr. 78(16)-80(2) Rather than acquire its own verifiers, Santanna merely asks the marketers to see to it themselves that each sale is verified, without seeking any guarantees that such verifications are independent. Therefore, Santanna's "marketer-verifiers" have an improper financial incentive to verify their own questionable sales. Use of an independent party that is not affiliated with the marketer would be more consistent with the Commission's established verification procedures and would provide far greater assurance that customers both understand and assent to the terms and conditions of Santanna's gas supply offer. Santanna has provided no evidence that it has adopted, or even understands these basic principles of consumer protection, or that it is aware of their incorporation into Illinois law.

F. Terms and Conditions.

Santanna has failed to provide the natural gas consumers its agents have solicited with marketing materials or written information adequately disclosing in plain language, the prices, terms and conditions of products or services that it is offering. The incumbent utility practice of serving a portion of gas customers' winter demand with gas purchased and stored in the summer generally mitigates the effect of seasonal price variations on customers. Santanna's policy of simultaneous billing for used and stored gas seems to instead reverse natural gas's seasonal impact on customers. The cost of gas that would otherwise be billed by the incumbent utility in the winter to mitigate higher winter prices, is, under Santanna's plan, billed by Santanna in the summer. This can and has led to significantly higher gas bills during the summer months. Regardless of whether or not customers ultimately save money over their incumbent utility service, the significant

financial impact of Santanna's billing spikes on customers dictates that Santanna's billing practices be clearly and thoroughly explained, prior to obtaining a customer's assent to switch gas suppliers. *See* Tr. 383(22)-384(10).

1. Santanna's marketing materials and customer correspondence do not disclose sufficient terms and conditions in plain language, contrary to the provisions of Section 19-115.

Santanna's telemarketing scripts and concomitant door-to-door marketing scripts do not adequately disclose, in plain language, the prices, terms and conditions of its natural gas supply service. Section 19-115 of the Act requires that any marketing materials which make any statements concerning, prices, terms and conditions must contain information that adequately discloses the prices, terms and conditions of the products and services offered

First, Santanna has not adequately described its policy of billing for stored gas. The initial marketing materials and telemarketing scripts did not even mention billing for storage. Santanna Ex. 1.0 at 10(211-213). Later versions of marketing materials and scripts failed to adequately describe billing for storage. Tr. 383(22)-384(10). Indeed, the primacy of customer complaints concerning gas bills that were significantly higher than normal for that month demonstrate that Santanna's billing policy had not been adequately explained. *See* Tr. 279(17)-280(17); Santanna Ex. 1.0 at 8(166-171).

Secondly, the materials and customer correspondence attached to Mr. Gatlin's rebuttal testimony not only fail to adequately disclose the cash out terms and conditions governing Santanna's gas supply service, but offer entirely different terms than those which Santanna claims to provide to customers. Regardless of Mr. Gatlin's opinion that

Santanna's current cash out policy is better for customers (Santanna Ex. 1.0 at 9 (205-6)), the failure to properly explain these terms violates the requirements of Section 19-115.

2. Santanna's contracts do not adequately disclose the prices, terms and conditions of Santanna's gas supply service.

Santanna's contracts fail to adequately disclose the terms and conditions of the gas supply service offered by Santanna. Section 19-115 also requires that before a customer is switched to another gas supplier, the AGS must provide the customer with written information that adequately discloses, in plain language, the prices, terms and conditions of products or services that it is offering. Santanna's contracts fail to meet these requirements because they do not adequately explain the extent to which consumer's summer gas bills will increase under Santanna's unique billing methods.

First, most of the contract forms used by Santanna fail to inform consumers about Santanna's practice of billing customers for both stored and used gas. The only contract form that does discuss Santanna's billing for storage, does not provide enough information. Tr. 383(22)–384(10). Second, most contract forms used by Santanna fail to inform Santanna customers how they will be compensated for excess stored gas should they terminate service with Santanna. The one contract form that does address it describes a compensation policy that Santanna no longer uses.

Finally, while the contract attached to Mr. Gatlin's testimony (Exhibit 1.14) appears to meet the three day cancellation requirement set out in section 2(b) of the Consumer Fraud and Deceptive Business Practices Act, the termination letter offered as Santanna exhibit 1.02 explicitly states that any termination will occur about 40 to 70 days from the

date of the termination request. Under this policy, customers waiting for their termination to take effect continue to be billed by Santanna, at upwards of ten times or greater than the cost of gas actually used. AG Exhibit 1.01 at AG 030-32, AG 033-37.

Santanna's termination policies violate the Consumer Fraud Act and consequently disqualify them from certification pursuant to section 19-110(e)(5). 220 ILCS 19-110(e)(5). Therefore, because Santanna's contracts fail to meet the disclosure requirements of Section 19-115(f), and because the company is in violation of Section 19-110(e)(5) due to its contravention of the Illinois Consumer Fraud Act, the Commission cannot grant its application for a certificate of service authority.

a. Storage component of Santanna's monthly bill.

None of Santanna's contracts provide sufficient information regarding Santanna's policy of billing customers for both the gas used by the customer, and the gas not yet used but stored for future use by the customer. As stated above this is a fundamental distinction from the manner in which customers have been billed for gas by their incumbent utility. *See* Tr. 383(22)-384(10). This fundamental distinction can and has resulted in customers receiving monthly bills that are several times the amount of a customer's normal usage-based gas rates. These billing spikes have a significant impact on all customers – who are concurrently paying for substantial summer electric bills, but especially on those living on fixed incomes. Accordingly, it is vital that customers understand Santanna's billing policy prior to agreeing to switch gas suppliers.

Santanna provided five contract forms that it claims were used by its marketers from March 1, 2002 through July 31, 2001. Each of these forms were used for a short

period within that time frame. According to Santanna: the first was used from February 20, 2002 through May 17; the second was used from May 1, 2002 through May 17, 2002; the third was used May 17, 2002 through July 8, 2002; the fourth was used from July 9, 2002 through July 15, 2002; and the fifth was used from July 15 through to the present. Tr. 209(18-21), 213(22)-214(6), 217(13-18), 220(8-11), 222(4)-223(4). The fifth version of Santanna's contract is the only version that contains any provision regarding Santanna's billing for storage policy. This version, however, does not warn consumers that their summer bills may increase by several hundred percent. This significant an increase, demands explicit statements of sufficient font size to be readily read and understood by any potential customer.

Further, as addressed in Section 4(b), several customers were shown to have been switched to Santanna service using contract forms that were either not supposed to used at the time they were signed or simply were not identified as official Santanna contracts. Therefore, it is reasonable to assume that even if the Commission considers the fifth version to meet the requirements of Section 19-115, the majority of Santanna's customers, signed up both before and after July 15, 2002, were not informed of the billing for storage policy to which they were agreeing.

b. Compensation for unused natural gas.

Santanna appears to treat all customers identically when "cashing out" their unused gas upon termination. However, these customers were signed up under different contract provisions and received different welcome letters. Santanna Ex. 1.0 at 9(203-204).

Santanna witness Gatlin's testimony states that Santanna "credits its former customers for [the] volume of [unused] gas at the rate the customer paid for the gas." Santanna Ex. 1.0 at 9(202-203); Santanna Ex. 1.02. However, every attachment to Mr. Gatlin's direct testimony refers to the earlier practice of "cashing out" customers' unused gas at 90% of the weekly market value of the gas as of the termination date. Santanna Exhibits 1.02; 1.03; 1.04 at SES ICC 041, 1.05 at SES ICC 154, 1.09; and 1.14; *see also* Tr. 297(22)–298(5). Indeed, Santanna Exhibit 1.14 has been in use since July 15, 2002. Santanna Ex. 1.14. Yet, Ex. 1.14 still states that Santanna will cash out unused gas at 90% of the market value of gas on the termination date.

While Santanna claims that the current method of "cashing out" terminated customers described in Mr. Gatlin's rebuttal testimony is "…the more favorable route for the customer," it is important to note that Santanna is merely crediting customers the same amount that the customer was actually billed for the unused gas. Whether Santanna's cash-out policy is actually more favorable to customers or Santanna depends on what the market value for gas on the date of termination is relevant to the amount for which Santanna originally billed the customer.

More importantly, Santanna appears to be rewriting its agreements with its customers, in violation of Section 19-115(f), which requires an AGS to inform any customer of all applicable terms and conditions prior to implementing a switch from another supplier.

V. CONCLUSION

The evidence in the record demonstrates that Santanna's agents have falsely obtained the residential gas customers' information and signatures necessary to switch suppliers by: misrepresenting themselves as employees of the incumbent gas utility; offering price quotes; collecting bills and survey signatures; and claiming that customers have no choice but to sign up with Santanna. The evidence in the record also shows that Santanna has allowed its agents to: perform their own training; monitor their own sales people; and modify Santanna's marketing scripts and even Santanna's contracts without significant oversight. Further, Santanna has refused to pay their marketers for unverified sales. Yet, Santanna has allowed marketers to verify their own sales, in total contravention of the purpose of third party verifications.

However, most significant of all is Santanna's mantra that where residential customers are not satisfied with Santanna as their gas supplier, those customers are free to cancel their service. Santanna Ex. 1.0 at 13(293-94). This is not a solution to a marketing campaign which has generated several thousand complaints and over 13,000 cancellations. Indeed, given that a single bill from Santanna can be ten times a customer's usage or more for that month, Santanna's offered option to cancel service within approximately a billing cycle does little to offset the financial impact of these billing spikes. AG Ex. 1.1 at AG030-32, AG033-37. This is especially true for those customers who pay their utilities by automatic bank draft. AG Ex. 1.1 at AG043-46.

Therefore, for the above reasons the People of the State of Illinois urge the Illinois Commerce Commission to deny Santanna Energy Service's Application for a Certificate of

Service Authority pursuant to 220 ILCS 5/19-110(e). The People further request the Commission not grant Santanna a conditional certificate of service authority.

Respectfully submitted,
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Dated: September 20, 2002

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